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Attorney for Plaintiff  
Ping JIANG

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Ping JIANG

Plaintiff

vs.

MICHAEL CHERTOFF, Secretary of the  
Department of Homeland Security;  
ROBERT S. MUELLER, Director of Federal  
Bureau of Investigation

Defendants.

**C 07 3909**

Case No.:

**COMPLAINT FOR WRIT IN THE  
NATURE OF MANDAMUS**

"Immigration Case"

Plaintiff Ping JIANG, by and through his undersigned attorney, sues Defendants and states  
as follows:

1. This action is brought against the Defendants to compel action on the Application to Adjust to  
Permanent Resident Status, or Form I-485, by Plaintiff Ping JIANG, based on his employment,  
properly filed by the Plaintiff. The I-485 application remains within the jurisdiction of the  
Defendants, who have improperly withheld action on said application to Plaintiff's detriments.

**PARTIES**

2. Plaintiff Ping JIANG is a native and citizen of the People's Republic of China. His Form  
I-485, Application to Register Permanent Resident or Adjust Status, was received by the  
U.S.C.I.S. on November 23, 2004 (**Exhibit 1: Notice of I-485 Receipt**) and is seeking to become  
lawful permanent resident of the United States as beneficiary of an approved I-140 Immigrant  
Petition for Alien Worker.

3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security  
(DHS), and this action is brought against him in his official capacity. He is generally charged

ORIGINAL Filing  
FILED

JUL 30 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CRB**

1 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate  
2 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.  
3 4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),  
4 the law enforcement agency that conducts security clearances for other U.S. government agencies,  
5 such as the Department of State. As will be shown, Defendant has failed to complete the security  
6 clearances on Plaintiff's case.

#### 7 JURISDICTION

8 5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,  
9 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

#### 10 VENUE

11 6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action  
12 against officers and agencies of the United States in their official capacities, brought in the  
13 District where the Plaintiff resides if no real property is involved in the action.

#### 14 EXHAUSTION OF REMEDIES

15 7. Plaintiff has exhausted his administrative remedies.

#### 16 CAUSE OF ACTION

17 8. Plaintiff Ping JIANG is a native and citizen of the People's Republic of China. His  
18 Form I-485, Application to Register Permanent Resident or Adjust Status, was filed concurrently  
19 with the I-140 (Immigrant Petition for Alien Worker) filed by Plaintiff's employer ORACLE  
20 CORP. The I-140 was approved on May 26, 2005 (**Exhibit 2: On-Line Status Search Result**).

21 9. According to the Service Center processing dates, the USCIS California Service Center is  
22 currently processing I-485 employment-based adjustment application filed on January 13, 2007  
23 (**Exhibit 3: Copy of NSC Processing Dates Posted on July 16, 2007**). Plaintiff Ping JIANG's I-  
24 485 application has now remained pending for two years and eight months from the date of the  
25 filing.

26 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance  
27 with the law. Defendants unreasonably have delayed in and have refused to adjudicate Plaintiff's  
28 I-485 application for two years and eight months from the date of filing, thereby depriving

1 Plaintiff of the rights to the decision on his application and the peace of mind to which Plaintiff is  
2 entitled.

3 11. Plaintiff has been damaged by the failure of Defendants to act in accord with their duties  
4 under the law.

5 (a) Plaintiff Ping JIANG has been damaged by simply being deprived of the  
6 adjudication of his Application to Adjust to Permanent Resident Status for two  
7 years and eight months. Plaintiff has also been unable to plan any foreign travel or  
8 pursue a future course of action in the United States due to the pendency of his I-  
9 485 application.

10 (b) Plaintiff Ping JIANG has also been damaged in that he is unable to change his  
11 employer during the pendency of his I-485 application, which is tied to his  
12 approved I-140.

13 (c) Plaintiff Ping JIANG has further been damaged in that his employment  
14 authorization and travel document are tied to his status as applicant for permanent  
15 residency and are limited to increments not to exceed one year. 8 CFR  
16 §274a.12(c)(9). Therefore, Plaintiff will be forced to repeatedly apply and pay for  
17 extensions of employment authorization and travel document, to the continued  
18 inconvenience and harassment of Plaintiff to continually insure his work and travel  
19 eligibility.

20 12. The Defendants, in violation of the Administrative Procedures Act and Mandamus Act, 5  
21 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's I-485  
22 application and have failed to carry out the adjudicative functions delegated to them by law with  
23 regard to Plaintiff's case.

24 **PRAYER**

25 13. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff  
26 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,  
27 the Court enter an order:

28 (a) requiring Defendants to expeditiously complete Plaintiff Ping JIANG's FBI Security

1 Check for his I-485 application, if security check is the only reason for the delay;

2 (b) requiring Defendants to expeditiously process Plaintiff's I-485 Application to  
3 conclusion;

4 (c) awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice Act;  
5 and

6 (d) granting such other relief at law and in equity as justice may require.

7 Dated: July 27, 2007

Respectfully submitted,

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11 Justin X. WANG, Esq.  
12 Attorney for Plaintiff  
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**CERTIFICATION OF INTERESTED ENTITIES OR PERSON**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: July 27, 2007

Respectfully submitted,



Justin X. WANG, Esq.  
Attorney for Plaintiff

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	Notice of I-485 Receipt
2	On-Line Status Search Result re: I-140
3	Copy of CSC Processing Dates Posted on July 16, 2007

Exhibit 1

# UNITED STATES OF AMERICA

RECEIPT NUMBER WAC-05-040-52600		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE November 23, 2004	PRIORITY DATE	APPLICANT A97 888 130 JIANG, PING
NOTICE DATE November 29, 2004	PAGE 1 of 1	
LARRY L. DRUMM BERRY APPLEMAN & LEIDEN LLP RE: PING JIANG 353 SACRAMENTO ST STE 1300 SAN FRANCISCO CA 94111-3633		Notice Type: Receipt Notice  Amount received: \$ 385.00 Section: Adjustment as direct beneficiary of immigrant petition

Receipt notice - If any of the above information is incorrect, call customer service immediately.

Processing time - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at [uscis.gov](http://uscis.gov).
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
- Processing times can change. If you don't get a decision or update from us within our current processing time, check our website or call for an update.

If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

Notice to all customers with a pending I-130 petition - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to: [www.state.gov/travel](http://www.state.gov/travel) <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at [www.uscis.gov](http://www.uscis.gov) or contact us at 1-800-375-5283.

Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE  
CALIFORNIA SERVICE CENTER  
P. O. BOX 30111  
LAGUNA NIGUEL CA 92607-0111  
Customer Service Telephone: (800) 375-5283





Exhibit 2



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Receipt Number: wac0504052697

[Services While Your Case is Pending](#)

Application Type: I140, IMMIGRANT PETITION FOR ALIEN WORKER

[Civil Surgeons](#)

Current Status: Approval notice sent.

[Processing Times](#)

On May 26, 2005, we mailed you a notice that we have approved this I140 IMMIGRANT PETITION FOR ALIEN WORKER. Please follow any instructions on the notice. If you move before you receive the notice, call customer service.

[Case Status Online](#)

[Case Status Search](#)

[Register](#)

You can choose to receive automatic case status updates, which will be sent via email. Please click [here](#) to create an account online.

[Login](#)

If you would like to see our current Processing Dates for Applications and Petitions, click [here](#).

Note: Case Status is available for Applications and Petitions which were filed at USCIS Service Centers. If you filed at a USCIS Local Office, your case status may not be reviewable online but for processing times on forms filed at that Office please, [click here](#).

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 - 5283 or 1-800-767-1833 (TTY).

[New Search](#)

[Printer Friendly Case Status](#)



07-26-2007 09:23 PM EDT

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Exhibit 3

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## U.S. Citizenship and Immigration Services California Service Center Service Center Processing Dates Posted July 16, 2007

**Notice:** U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report that as the processing time. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show a date consistent with our service level goal because that reflects our commitment.

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

### There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information.  
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

### What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer

for your records.

Service Center Processing Dates for **California Service Center** Posted July 16, 2007

Form	Title	Classification or Basis for Filing	Now Processing Cases with Receipt Notice Date of
I-90	Application to Replace Permanent Resident Card	Initial issuance or replacement	July 11, 2006
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	March 26, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	June 30, 2007
I-129	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	June 15, 2007
I-129	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	E - Treaty traders and investors	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	L - Intracompany transfers	June 15, 2007
I-129	Petition for A Nonimmigrant Worker	Blanket L	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	O - Extraordinary ability	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	R - Religious occupation	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	May 15, 2007
I-129F	Petition for Alien Fiance(e)	K-1/K-2 - Not yet married - fiance and/or dependent child	January 13, 2007
I-130	Petition for Alien Relative	U.S. citizen filing for a spouse, parent, or child under 21	December 31, 2006
I-130	Petition for Alien Relative	U.S. citizen filing for an unmarried son or daughter over 21	January 17, 2003
I-130	Petition for Alien Relative	U.S. citizen filing for a married son or daughter over 21	April 30, 2001
I-130	Petition for Alien Relative	U.S. citizen filing for a brother or sister	April 30, 2001
I-130	Petition for Alien Relative	Permanent resident filling for a spouse or child under 21	January 01, 2005
I-130	Petition for Alien Relative	Permanent resident filling for an unmarried son or daughter over 21	February 07, 2005
I-131	Application for Travel Document	All other applicants for advance parole	April 09, 2007
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	January 13, 2007

I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	September 28, 2005
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	January 13, 2007
I-526	Immigrant Petition By Alien Entrepreneur	For use by an entrepreneur who wishes to immigrate to the United States	January 13, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	April 14, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	April 14, 2007
I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	December 03, 2006
I-751	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	January 13, 2007
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	April 28, 2007
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	June 16, 2007
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	April 28, 2007
I-765	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	April 28, 2007
I-765	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	April 28, 2007
I-765	Application for Employment Authorization	All other applications for employment authorization	April 28, 2007
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	January 13, 2007
I-824	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	January 13, 2007
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors)	January 13, 2007
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors) based on PL107-273	September 10, 1997